

Mandate of the Working Group on the issue of discrimination against women in law and in practice

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Excellency,

I have the honour to address you in my capacity as Chairperson-Rapporteur of the Working Group on the issue of discrimination against women in law and in practice pursuant to Human Rights Council resolution 23/7.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning discriminatory provisions against women in a number of areas of marital legislation including bride-wealth, inheritance for widows, and divorce.

According to the information received:

The Law of Marriage Act of 1971 discriminates against women in sections 10(2), 13(1) and 15 in that a man is allowed to have more than one wife thus permitting polygamous marriages if it is contracted in Islamic form or according to rites recognized by customary law in Tanzania and the husband is not married in a monogamous marriage (Sections 10(2) and 15). The law further discriminates against women under section 13, in that it permits the marriage of 15-year-old girls, while the minimum age of marriage for boy is 18.

The Local Customary Law (Declaration) Order of 1963 provides for the payment of bride-wealth which consists of cattle or other property from the bridegroom to the bride's father or his representatives. This Law also stipulates that before the daughter attains the age of 21 she shall not be married without her father's consent or the consent of her father's representative. According to the Law the wife of a deceased husband may accept to be inherited by the deceased's relative in which case she becomes a lawful wife of that relative and the bride-wealth paid by the deceased husband is considered as if it was paid by that relative. If she refuses, she is free to leave and reside with her natal family and will be given a certificate confirming her widowhood status and her separation from the family of the deceased husband. It further stipulates a number of discriminatory grounds against women for husbands seeking divorce, namely the wife's adultery

(husband's adultery is not a cause of divorce but the court may decide to grant it depending on the severity of the case), if the wife refuses to follow her husband who intends to move to another location within or outside the district, if a wife is not regularly performing housework, misbehaving, shameless behaviour or drunkenness by the wife (in case of husbands there must be a clear intention of neglecting the household including bad acts but small things such as not providing clothing, women's items or meat are not considered grounds for divorce), if it is proven that the wife voluntarily provoked an abortion, if a wife regularly refuses to have sex with her husband without any reason (in case of husbands the court has discretion in investigating those cases where the husband refuses to have sex with his wife for a long time) . In case of incest the law states that the court may order the custody of children to be given to the husband's relatives and if there are no relatives of the husband, then a relative of the wife may be appointed as guardian.

In this regard, the Working Group wishes to recall CEDAW's Concluding Observations on United Republic of Tanzania (CEDAW/C/TZA/CO/6), in which the CEDAW Committee urged the State party to ensure the Convention and its provisions are incorporated into national law and are fully applicable in the domestic legal system to eliminate any forms of discrimination against women in the public and private spheres. Therefore, the Committee recommended Tanzania to harmonize civil, religious and customary law to implement measures aimed at eliminating polygamy and urged Tanzania to speedily enact the proposed amendments to the Marriage Act to ensure that it establishes one legal minimum age for marriage, at 18 years for both girls and boys, in line with internationally acceptable standards. The Working Group would also like to recall the views adopted in March 2015 by the CEDAW Committee in relation to Communication No. 48/2013 (submitted by E.S. and S.C. against the United Republic of Tanzania). In its views the Committee noted that although the Constitution includes provisions for equality and non-discrimination, the State failed to revise or adopt legislation to eliminate the remaining discriminatory aspects of its codified customary law provisions with regards to widows. In this respect the Committee recommended that the State expedite the constitutional review process to ensure that the rights enshrined in the Constitution have precedence over inconsistent and discriminatory customary provisions. It also asked the State to ensure that all discriminatory customary laws in particular provisions of the Local Customary Law (Declaration) (No.4) Order are repealed or amended and brought into full compliance with the International Convention on the elimination of all forms of discrimination against women.

The Working Group would also like to recall the recommendations made in the context of the Universal Periodic Review of Tanzania, which are supported by the Government of Tanzania, which called for a number of measures to, inter alia, put in place a comprehensive strategy and effective legislation to eliminate cultural practices and stereotypes that discriminate against women and take additional measures to extend legal equality to all women in all areas of law (see recommendations 85.22, 85.23 and 85.53 in A/HRC/19/4).

While the Working Group is aware that the Constitutional Review seems to have been prioritized over other legal reforms which have been put on hold pending the

outcome of this process including the holding of the Referendum, it wishes nevertheless to recall that eliminating discrimination legislation is an immediate obligation of the State that requires urgent attention particularly in light of the postponement of the Referendum and uncertainty about the time-line of the Constitutional Review Process.

The Working Group would also like to draw to the attention of your Excellency's Government the existence of good practices by States in your region upholding equality between women and men in relation to marital status and related matters.

In order to clarify the measures being taken by your Excellency's Government to repeal the discriminatory legislative provisions on marital status and related matters, the Working Group would be grateful if you could address the following matters:

1. Please provide any additional information on the current status of the relevant legislation with regard to the rights of Tanzanian women in the context of marriage and related matters and how these comply with the principle of equality between women and men.
2. Please provide information on any measures that your Excellency's Government has taken or intend to take in order to implement the recommendations by UN human rights mechanisms, referred to above, and to bring its legislation into compliance with international and regional human rights law.

The Working Group would appreciate a response within 60 days. This communication and your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration

The Working Group remains available for any type of technical advice on legislative reform that your Excellency's Government may require.

Please accept, Excellency, the assurances of my highest consideration.

Eleonora Zielinska
Chairperson-Rapporteur of the Working Group on the issue of discrimination against
women in law and in practice